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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 JAMES S. GORDON, JR., JAMES  
9 S. GORDON, JR.'S INTERNET  
10 ACCESS SERVICE /  
INTERACTIVE COMPUTER  
SERVICE, a Sole Proprietorship,

11 Plaintiffs,

12 v.

13 SUBSCRIBERBASE HOLDINGS,  
14 INC., SUBSCRIBERBASE, INC.,  
and JOHN DOES 1-10,

15 Defendants.  
16

NO. CV-08-5037-RHW

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SANCTIONS PURSUANT TO  
RULE 11; DENYING MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

17 Before the Court is Defendants' Motion for Sanctions Pursuant to Rule 11  
18 (Ct. Rec. 82) and Plaintiffs' Motion for Partial Summary Judgment (Ct. Rec. 101).  
19 A telephonic hearing on Defendants' Motion for Sanctions was held on October  
20 30, 2009. Plaintiff participated *pro se*; Defendants were represented by Derek  
21 Linke.

22 Prior to the hearing, the Court directed the parties to file briefing regarding  
23 the implication of the recent Ninth Circuit case of *Gordon v. Virtumundo, Inc.*, 575  
24 F.3d 1040 (9<sup>th</sup> Cir. 2009). On December 3, 2009, Plaintiff filed a Motion for  
25 Partial Summary Judgment.

26 **1. Defendants' Motion for Sanctions Pursuant to Rule 11**

27 Defendants seek sanctions against Plaintiffs for filing his Motion for  
28

**ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS  
PURSUANT TO RULE 11; DENYING MOTION FOR PARTIAL  
SUMMARY JUDGMENT ~ 1**

1 Sanctions against Defendants and/or Defendants' Counsel for Spoilation of  
2 Evidence. In his motion, Plaintiffs had alleged that Defendants destroyed evidence  
3 of their culpability by illegally seizing Plaintiffs' computers. The Court  
4 summarily denied the motions as well as Plaintiffs' Motion for Reconsideration.

5 Defendants now move for sanctions, arguing that Plaintiffs' motions were  
6 frivolous. The Court agrees. Defendant was not a party to the *Virtumundo*  
7 litigation, notwithstanding that Mr. Linke represents both companies. There was  
8 no legal basis for filing the motions. Likewise, Plaintiff did not meet and confer  
9 prior to filing his motion for sanctions.

10 **2. Impact of *Gordon v. Virtumundo, Inc.***

11 Based on the reasoning in *Virtumundo*, the Court dismisses Plaintiffs'  
12 amended Complaint with prejudice. The Court finds that Plaintiffs do not have  
13 standing to assert a claim under CAN-SPAM because he is not a bona fide Internet  
14 access service provider that has been adversely affected by violation of CAN-  
15 SPAM. The Court finds that Plaintiffs' claims under the Washington Commercial  
16 Electronic Mail Act (CEMA) and Washington Consumer Protection Act are  
17 preempted.

18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Defendants' Motion for Sanctions Pursuant to Rule 11 (Ct. Rec. 82) is  
20 **GRANTED.**

21 2. Plaintiffs' Motion for Partial Summary Judgment (Ct. Rec. 101) is  
22 **DENIED**, as moot.

23 3. Within 10 days from the date of this Order, Defendants are directed to  
24 file briefing and evidentiary support regarding its reasonable attorneys fees and  
25 costs expended in responding to Plaintiffs' motions.

26 4. The above-cause of action is **dismissed**, with prejudice.

27 ///

28 **ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS  
PURSUANT TO RULE 11; DENYING MOTION FOR PARTIAL  
SUMMARY JUDGMENT ~ 2**

1           **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
2 Order and forward copies to Plaintiff and counsel.

3           **DATED** this 11<sup>th</sup> day of December, 2009.

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5                               s/Robert H. Whaley  
6                               ROBERT H. WHALEY  
7                               United States District Judge  
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